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EFFECTIVE FUNCTIONING OF BODIES ESTABLISHED PURSUANT TO UNITED NATIONS HUMAN RIGHTS INSTRUMENTS

Written statement submitted by the Lawyers Committee for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[11 February 1998]

GE.98-10646 (E)

Composition of the treaty bodies: Independence, competence and geographical representation

1. The six principal human rights treaties now have 900 ratifications. Although this falls short of the Vienna Declaration's goal of universal ratification, it nonetheless places formidable demands on the treaty bodies charged with monitoring the human rights treaty system. Within any five year cycle of periodic reporting, some 900 country reports should be reviewed by treaty bodies. Each review requires Committee members to familiarize themselves with the essential elements of the report, verify these against other available information, and apply not only the provisions of the treaty but also the Committee's own general comments and other jurisprudence. In addition, communications - in a range of languages - from individuals asserting violation of their treaty rights by State parties must be considered. These tasks fall to the treaty body members, who typically meet for six or eight weeks a year, who are essentially unpaid, and to whom the United Nations provides only the most nominal administrative support and virtually no information resources.

2. While the imbalance between the human and other resources of the treaty bodies and their role as the guardian and cornerstone of the treaty implementation system is not new, it is becoming more acute as the number of States parties increases: the 10 members of the Committee on the Rights of the Child now monitor the application of the Convention on the Rights of the Child in 191 countries. Although this situation is being given increased recognition, it has not led to a consensus as to its resolution. Some commentators believe the solution lies in a consolidation of the system, moving incrementally towards a situation in which a single monitoring body would oversee State reporting under all six treaties. Others see this proposal as unrealistic or fear it would weaken the existing system. But, whatever the merits, major changes cannot be made immediately. The urgent need is therefore to improve the existing system and bring it closer to the system envisaged by the treaties.

3. This situation has long been a source of concern to the Lawyers Committee on Human Rights. We have watched as the demands placed on the treaty monitoring system expanded, with no significant increase in resources, or regular review of Committee working methods, or creative thinking about how independence, competence and geographical representation could be ensured in nomination and election procedures that each involve over 100 State parties. This contrasts sharply to the seriousness with which comparable issues are being addressed in the United Nations discussions of an International Criminal Court.

4. We therefore welcome recent steps by the Chairpersons, and some committees, to address these problems. But we believe further change is urgently needed in five principal areas:

(a) An increase in the resources available to the Committees;

(b) Remuneration of members to remove the present de facto financial requirement for candidates;

(c) The election of members who are more geographically representative of the States parties;

(d) The adoption of transparent procedures within the Committees to ensure impartiality and independence in their methods of work; and

(e) The adoption of new procedures to facilitate the nomination of candidates who are "independent" and "expert".

Resources

5. The treaties require the United Nations to provide "the necessary staff and facilities for the effective performance of the functions" of the Committees. This has not been done, and many Committee members must rely on their own resources, supplemented by information from non-governmental organizations. In any national system, it is axiomatic that adequate resources are needed for a judicial or quasi judicial body to perform its functions effectively. The same should be true for the United Nations.

6. We believe that the Office of the High Commissioner should undertake a needs assessment; each Committee should be asked to identify what it requires in order to function effectively in terms of, for example, information, research capacity, language skills and travel.

Honoraria/remuneration

7. Members are paid their expenses for attendance at meetings. Some treaties also provide for "emoluments" from the United Nations. But others do not. Those "emoluments" are not high - currently $3,000 for two full months [and often more] of Committee work a year. Aside from the inequity of having two different "regimes", the present system effectively encourages the election of members who have personal means, or government or other employment, which allow them to devote a substantial amount of essentially unpaid time to United Nations work. Inevitably, this has a negative and disproportionate effect on candidates from poorer countries and so on the representative character of the elected members.

8. We believe that honoraria, set at an appropriate level, should be paid to all treaty body members.

Representation

9. The General Assembly recently underlined to States parties the importance of ensuring that the committees have an "equitable geographical distribution of membership" and are representative of the principal legal systems. This is a sensible provision since it is self-evident that a monitoring system will be more effective and carry more authority if it contains members who are familiar with the particular social, legal, and cultural characteristics of a country or region under review. But in practice the composition of some Committees is not representative of the States parties. The problem presents itself in acute form in the case of the Human Rights Committee whose African members are from Egypt and Mauritius, and which has no member from the 38 States parties of sub-Saharan Africa.

10. We encourage States parties to solicit regularly from the Chairpersons reviews on the composition of the treaty bodies, notes on any major geographical imbalances, and advice before each election.

Impartiality and independence

11. Treaty bodies are not courts in the strict sense of the term, but as quasi judicial bodies they deal with equally complex - and often more sensitive - matters of law and fact. If they are to be effective, the Governments whose actions they criticize or endorse, and the individuals who are affected by their findings, must accept the treaty bodies as authoritative interpreters of international law. But their work is little reported, and is rarely known beyond the handful of government officials and NGOs who attend a particular session. The authority of the Committees therefore depends on the impartiality, independence and competence of their elected members. This means that members must therefore not only be impartial and independent, but must also be seen to be so. Independence will be put in question where a member is also a government official, and the appearance of impartiality will be placed in jeopardy if a member participates in the review of his or her own country's report.

12. The importance of this issue is now being recognized. In 1996, the treaty body chairpersons advised that members should refrain from participating in any aspect "of the consideration of the reports of the States of which they are nationals, or communications or inquiries concerning those States" (A/51/482, para. 29). The Human Rights Committee developed this principle in the recently (November 1997) adopted and useful Guidelines on independence and impartiality entitled "Human Rights Committee Guidelines for the exercise of their functions by members". In 1997, the Chairpersons turned their attention to the members' independence, and advised States parties that they "should refrain from nominating or electing ... persons performing political functions or occupying positions which were not readily reconcilable with the obligations of independent experts" (A/52/507, para. 68). The Human Rights Committee Guidelines go further in stating:

> "The appearance of impartiality of members of the Committee should not be affected by their connection with Governments. They should abstain from engaging in any functions or activities which may appear to be not readily reconcilable with the obligations of an independent expert under the Covenant. Members should abstain from participating in any political body of the United Nations [...] They should also abstain from acting as experts, consultants or counsels for any Government that might come up for consideration before the Committee."

Limits are also placed on relevant NGO activity by members.

13. We believe that States parties should no longer nominate or vote for ministers, senior officials and ambassadors.

Procedures for the nomination and election of independent experts

14. We are well aware that all these problems are accentuated by a shortage of qualified nominees for election. States parties may wish to elect members

from a particular region, but in the absence of qualified candidates there is little they can do. This is a general problem, and is not restricted to the United Nations treaty bodies. The recent growth of international legal and human rights institutions has not been matched by innovative procedures which enable the international community to identify qualified candidates. States parties should recognize this and take positive steps to expand the pool of qualified nominees. The Committees should be asked to record what qualifications/professional skills they would find useful in new members; States parties should consult with appropriate sectors of their societies (national legal, medical, academic, women's, children's and other non-governmental institutions) for names of suitable candidates; when they nominate candidates, they should do so on standard form curricula vitae that are drafted in such a way that a candidate's relevant experience is easily identifiable. It may be that some screening mechanism would also be helpful.

Recommendation

15. The Lawyers Committee for Human Rights encourages the Commission on Human Rights to mandate the Office of the High Commissioner to review, in consultation with the Chairpersons, the present nomination and election system, and recommend solutions to this problem, which is experienced by all regional and international human rights systems. We recommend that the Office take into account the experience of other United Nations and regional organizations, including that of the recently expanded Council of Europe.